

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH JOHNSON, COLBY GOROG,
JOSHUA FLINT, LOUIS ROBINSON,
JAMES DUONG, FERNANDO URIZA,
MICHAEL TWOMEY, and JESSICA
CALKINS, individually and on behalf
of all others similarly situated,

Plaintiffs,

- versus -

ELON MUSK, SPACE EXPLORATION
TECHNOLOGIES CORP dba SPACEX,
TESLA, INC., THE BORING COMPANY,
DOGECOIN FOUNDATION, INC.,
BILLY MARKUS, JACKSON PALMER,
DOGECOIN DEVELOPERS class
representative ROSS NICHOLL and
DOGE ARMY class representative MATT
WALLACE, individually and on behalf of
all others similarly situated,

Defendants.

Case No.: 1:22-cv-05037-AKH

**DECLARATION OF PLAINTIFFS’
ATTORNEY EVAN SPENCER
IN SUPPORT OF MOTION TO FILE
SECOND AMENDED COMPLAINT**

I, Evan Spencer, swear under penalty of perjury:

1. I am the attorney for Plaintiffs in this case and I submit this declaration in support of Plaintiffs’ motion to file a second amended complaint.
2. Attached as **Exhibit 1** is the proposed second amended complaint.
3. This declaration is attached as **Exhibit 2**.
4. **Exhibits 3 – 7** are Plaintiffs’ SEC certifications.
5. **Exhibits a – b** are Plaintiff Michael Lerro’s Dogecoin trades (**Exhibit 7**).
6. **Exhibits “A” – “U”** are true and accurate copies of tweets by Defendant Elon Musk.
7. **Exhibits “V” – “X”** are true and accurate copies of scientific studies regarding Musk’s

tweets.

8. Two days after the amended complaint was filed on September 8, 2022, the SEC announced that most cryptocurrencies are in fact securities and should be legally treated as such.
9. After Plaintiffs sent out the required 60-day SEC notice for additional class representatives, Plaintiffs were contacted by dozens of individuals who lost money trading Dogecoin including Michael Lerro who lost approximately \$150,000.
10. In addition, Mr. Musk continued manipulating the price of Dogecoin after the amended complaint was filed with additional tweets.
11. In light of all this information, Plaintiffs made changes to the complaint, modifications to the parties, and added new SEC Plaintiff certifications.
12. As a result of the foregoing, Plaintiffs have refrained from formally serving Defendants with either the original complaint or amended complaint and they have not entered an appearance.
13. I emailed counsel for Defendants Musk and Tesla (Quinn Emanuel) and counsel for Defendant Dogecoin Foundation, Inc. (Levine Lee), seeking to ascertain if they opposed Plaintiffs' motion to file a second amended complaint.
14. Sarah Concannon from Quinn Emanuel responded, "(T)hank you for your email. I am not authorized to take a position on behalf of Mr. Musk and Tesla, and note that you no longer purport to bring claims against SpaceX and The Boring Company..." and "I am counsel to Mr. Musk, Tesla, SpaceX, and The Boring Company. None of them are 'in this case' since they have not been served."
15. The Dogecoin Foundation did not respond to the undersigned's email.
16. As such, it is presumed that Defendants Musk, Tesla, and the Dogecoin Foundation did not oppose this motion and it is therefore filed as an "unopposed" motion.

Respectfully Submitted,

December 5, 2022

By: /s/ Evan Spencer
Evan Spencer
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December 2022, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system giving notice to all parties in this action.

s/Evan Spencer
Evan Spencer